

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 2068 of 1998

Between:

- 1 Komaram Mallayya S/o Suraiah, R/o Ippalapadu,
Buttayagudem Mandal, West Godavari District.
- 2 Komaram Suriah S/o Chinnaiah, R/o Ippalapadu,
Buttayagudem Mandal, West Godavari District. **PETITIONERS**

AND

- 1 The District Collector, Eluru, West Godavari District.
- 2 The M.R.O. Officer, Buttayagudem Mandal, West Godavari District.
- 3 The Director Of Settlements, Government Of A.P., Hyderabad.
- 4 Goddati Mukkayya @ Venkata Swamy S/o Venkanna
R/o Doramamidi Village, Polavaram Taluka, West Godavari District.
- 5 Goddati Nagayya S/o Venkanna, R/o Doramamidi Village,
Plavaram Taluka, West Godavari District.
- 6 Arepallay Veeranna S/o Subbaiah, R/o Doramamidi Village,
Polavaram Taluka, West Godavari District.
- 7 Vadlimudi Suranna S/o Tatabbai, R/o Doramamidi Village,
Polavaram Taluka, West Godavari District.**RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the respondent in seeking grant of patta under the A.P. Schedule Area (Land Transfer & Regulations) Act No.II/1970 in respect lands in patta No.1 extent Ac.8-00 gts and patta No.2 extent Ac.14-00 gts corresponding to R.S.No.459, 464 & 465 situate in the limits of Doramamidi Village of Buttayagudem Mandal West Godavari District belonging to the petitioner, as illegal, arbitrary, contrary to the provisions of the Act and violative of Art.14 of constitution and further direct the Respondents not to interfere with the peace full possession and enjoyment of the petitioners over the land in patta No.1 extent Ac.8-00gts and patta No.2. extent Ac.14-00 gts corresponding to R.S.No.459, 464 & 465 of Doramamidi Village of Buttayagudem mandal, West Godavari District.

Counsel for the Petitioners: MR.P.MADHUSUDHAN REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR REVENUE

Counsel for the Respondent Nos.4 to 6: MR. K.V.N. BHUPAL

Counsel for Respondent No.7: None appeared.

The Court made the following :

ORDER:

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The petitioners, by this writ petition, seek to declare the action of respondent Nos.1 to 3 in contemplating to grant pattas under the Andhra Pradesh (Scheduled Areas Ryotwari Settlement) Regulation, 1970 (Regulation II of 1970) in respect of the lands of the petitioners i.e. Ac.8-00 in patta No.1 and Ac.14-00 in patta No.2, totaling an extent of Ac.22-00 (for short “the subject lands”) corresponding to R.S. Nos.459, 464 and 465 of Doramamidi village, Buttayagudem Mandal of West Godavari District, as illegal and arbitrary and also to direct the respondents not to interfere with their possession and enjoyment of the said lands.

The petitioners state that they belong to Scheduled Tribes and the subject lands belong to them. They state that the said lands were leased out by their ancestors to the family members of respondent Nos.4 to 7 who are non-tribes, and after expiry of the lease period when respondent Nos.4 to 7 did not vacate the lands, they filed an application under

Section 3(2)(a) of the Andhra Pradesh Scheduled Area Land Transfer Regulation No. I of 1959 (for short “Regulation I of 1959) as amended by Regulation No. I of 1970 before the Special Deputy Collector, Tribal Welfare, Eluru in S.R. No.152 of 1978 seeking restoration of the lands to them after ejecting respondent Nos.4 to 7 herein therefrom. It is stated that the Special Deputy Collector after hearing the petitioners as well as the unofficial respondents and considering the evidence on record, passed order of ejectment, dated 27-6-1979 holding that the transfer of the subject lands made to family members of respondent Nos. 4 to 7 herein is hit by the provisions of Section 3(1)(a) of Regulation I of 1959 as amended by Regulation I of 1970, and thus the said transfer, is null and void, and accordingly, ordered restoration of the lands to the petitioners and consequently issued ejectment decree and order for restoration of lands in Form-F under Rule 7(4) of the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969 (for short “the Rules”) ejecting respondent Nos.4 to 7 herein from the lands in question. It is stated that respondent Nos.4 to 7 aggrieved by the said order carried the matter in appeal before the Agent to the Government, West Godavari District, Eluru in S.R.A.No.91 of 1982 in respect

of Ac.14-00 only, and the same was dismissed on 29-4-1983 holding that respondent Nos.4 to 7 did not place any evidence in support of their contention that the said land was in Zamindari village and the same was taken over by the government under the provisions of the Estates Abolition Act, 1948 and confirmed the order of ejectment passed by the Special Deputy Collector, dated 27-6-1979, and the said order became final. The petitioners state that they were inducted into possession of the lands by the ejectment order.

The petitioners further state that suppressing the orders passed by the Special Deputy Collector under Regulation No. I of 1959 as amended by Regulation I of 1970 in favour of the petitioners, one V. Durga Rao, son of respondent No.7 herein filed an application under Regulation II of 1970 for grant of patta, before the Settlement Officer, Eluru who by proceedings S.R. No.415/75, dated 30-6-1984 granted ryotwari patta in his favour for

0-69 H.A. in R.S. No.459/2 and 3-46 H.A. in R.S. No.464 and the said order was confirmed by respondent No.3 herein in the appeal filed by respondent No.1, in AP No.197/84-02, dated 16-9-1997. Likewise, it is stated, respondent No.5 obtained similar order from the Settlement Officer, Eluru in proceedings SR No.12/94, dated 08-08-1997 for 0-68 H.A. in R.S. No.460/2 and 0-76 H.A. in R.S. No.460/4, and respondent No.6 also obtained similar order in AP No.145/81 (G2), dated 29-11-1996 from the appellate authority i.e. respondent No.3 herein for 3-60 H.A. in R.S. No.465. It is stated that the said Durga Rao, son of respondent No.7 herein filed W.P. No.30331 of 1997 seeking a direction not to disturb his possession in the land in R.S. Nos.495/2 and 464, and this Court by order dated 19-11-1997 directed respondent Nos.1 and 2 herein not to evict him from the said land unless notice is issued and enquiry in the matter is conducted.

The petitioners further state that respondent Nos.4 to 7 suppressing the earlier orders passed under Regulation I of 1959 as amended by Regulation I of 1970 in favour of the petitioners and without any notice to them, obtained the orders under Regulation II of 1970, which are contrary to the provisions of Regulation No. I of 1959 as amended Regulation

I of 1970, and they on the strength of the orders obtained under Regulation II of 1970 as well as the order in W.P. No.30331 of 1997 approached respondent Nos.1 and 2 for grant of pattas in their favour, and started interfering with the petitioners' possession and enjoyment of the subject lands without following the due procedure.

Assailing the impugned action of the respondents, the petitioners filed this writ petition.

A counter-affidavit is filed on behalf of respondent Nos.1 and 2 stating that the son of respondent No.7-V. Durgarao, respondent No.6 and respondent No.5 obtained orders under Regulation II of 1970 for grant of pattas suppressing the earlier orders and proceedings.

Respondent No.6 filed counter-affidavit denying the allegations made in the affidavit filed in support of the writ petition. It is stated that the subject lands originally belonged to Gottala Zamindar, and the non-tribes namely, Vandana Surya Prakasha Rao and Chikala Ramanath purchased the said lands and later transferred the same to respondent Nos.4 to 7 through a registered sale deed dated 20-7-1952 and since then respondent Nos.4 to 7 have been in possession and enjoyment of the lands. It is stated that the government took over the estate lands of Gottala Zamindar on 04-02-1953 under the provisions of A.P. Estates (Abolition and Conversion into Ryotwari) Act, 1948 and by that date

non-tribes were in possession of the said lands. It is stated that no transaction took place with respect to the said lands between a tribal and a non-tribal and the Settlement Officer after thorough enquiry granted pattas in favour of respondent Nos.4 to 7. It is stated that respondent Nos.4 to 7 through their sons obtained orders from this court in W.P. Nos.33372, 31704 and 10331 of 1997 for non-interference of their possession and enjoyment of the lands by respondent Nos.1 and 2 herein. It is stated that the petitioners were never in possession of the said lands and they filed this writ petition suppressing all these facts. Thus, respondent No.6 prays to dismiss the writ petition.

Heard the learned counsel for the petitioners, learned Government Pleader for Revenue appearing for official respondent Nos.1 to 3 and the learned counsel for unofficial respondent Nos.4 to 7.

The learned counsel for the petitioners submitted that the orders obtained by respondent Nos.4 to 7 under Section 9 of Regulation II of 1970 stating that the subject lands are estate lands of the erstwhile Guttala Zamindar and by the date the government took over the estate under the provisions of A.P. Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short "the Estates Abolition Act") i.e. on 04-02-1953, they were in possession of the lands by virtue of a registered sale deed

dated 25-7-1952 executed by non-tribes in their favour, are not valid, inasmuch as respondent Nos.4 to 7 did not issue any notice whatsoever as contemplated under Section 9(2) of Regulation II of 1970 to the petitioners who are interested parties to the subject lands.

At this juncture, the learned counsel for respondent Nos.4 to 7 submitted that the provisions of Regulation I of 1959 as amended by Regulation I of 1970 have no application to the subject lands, inasmuch as they are estate lands of Guttala Zamindar and the relevant regulation applicable to them is Regulation II of 1970 and therefore, the orders obtained by respondent Nos.4 to 7 for ryotwari pattas under Regulation II of 1970 are valid. He also submitted that inasmuch as respondent Nos.4 to 7 who are non-tribals, by virtue of a registered sale deed dated 20-7-1952 executed by other non-tribals in their favour, have been in continuous occupation of the subject lands since 04-02-1953 i.e. the date when the government took over the lands under Estates Abolition Act, they are rightly entitled to ryotwari pattas. He further submitted that since respondent Nos.4 to 7 came into possession of the subject lands seven years prior to coming into force of Regulation I of 1959, the Regulation

I of 1959 is not at all applicable to the lands for the reason that it has no retrospective operation and it does not affect the transfers made prior to its coming into force, as has been held by a Full Bench of this Court in **Narasa Reddy v. Collector Adilabad**. Therefore, he submitted, the orders obtained by respondent Nos.4 to 7 under Regulation II of 1970 are perfectly valid.

Thereupon, the learned counsel for the petitioners submitted that without setting aside the order dated 27-6-1979 passed against respondent Nos.4 to 7 and in favour of the petitioners under Regulation

I of 1959 as amended by Regulation I of 1970, which was confirmed by the appellate authority, the subsequent orders obtained by respondent Nos.4 to 7 under Regulation II of 1970 and that too behind the back of the petitioners, are illegal and contrary to the provisions of Section 7(1) of Regulation II of 1970, inasmuch as Amended 1959 Regulation has primacy over other regulations in view of its being a special legislation, as has been held by this Court in **G. Nagabhushanamma v. Government of A.P.**, and further as per G.O. Ms. No.68 Social Welfare (LTR.1) Department, dated 09-07-2002, any contrary determination under any other

Regulation including Regulation II of 1970 in the Agency Areas of the State, is null and void, for Regulation I of 1959 as amended by Regulation I of 1970 shall have overriding effect over any other law for the time being in force in the Tribal areas in the State in respect of the land transfers.

The learned Government Pleader appearing for Respondent Nos. 1 to 3 submitted that as per the material papers, the order passed by the primary authority under Regulation I of 1959 as amended by Regulation I of 1970 against respondent Nos. 4 to 7 with respect to the subject lands, which was confirmed by the Appellate Authority, is final and respondent Nos. 4 to 7 obtained the orders under Regulation No. II of 1970 suppressing the earlier order passed under Regulation I of 1959 as amended by Regulation I of 1970.

It is not in dispute that the ejectment order, dated 27-6-1979 obtained by the petitioners against respondent Nos. 4 to 7 with respect to the subject lands under Regulation I of 1959 as amended by Regulation I of 1970, which was confirmed by the Appellate Authority i.e. Agent to the Government by order dated 29-4-1983, has attained finality, as it has not been challenged by respondent Nos. 4 to 7 before any higher authority or Court. It is also not in dispute that no notice as contemplated under Section 9(2) of Regulation II of 1970 was issued to the petitioners, who are interested persons to the subject lands, before granting ryotwari pattas to respondent Nos. 4 to 7 under Regulation II of 1970.

The provisions under Section 7 of Regulation II of 1970 deal with the lands in which ryot is entitled to ryotwari patta. Under Section 9 of Regulation II of 1970, the Settlement Officer or the appellate authority, namely the Director of Settlements, is obliged to record his satisfaction that the claim for ryotwari patta is not void under any law applicable to the scheduled areas, which necessarily means void under Regulation I of 1959 as amended by Regulation I of 1970. An analysis of the relevant provisions of Regulation II of 1970 reveals that ryotwari patta may be claimed by two classes of persons — (a) by any ryot in respect of the lands which were properly included or ought to have been so included in his holdings except the lands in respect of which any other person is entitled to a ryotwari patta under any other law for the time being in force in the State relating to grant of ryotwari patta; and (b) by persons who were entitled to ryotwari patta under the Estates Abolition Act, and this class of persons would be entitled to a patta on fulfilling the specified

pre-conditions — (1) the land should have been continuously in the occupation of that person from the notified date under the Estates Abolition Act, (2) such person who is not a member of the Scheduled Tribe is entitled to a ryotwari patta provided he has been in continuous possession or occupation of the land for not less than eight years prior to the commencement of Regulation II of 1970, and (3) such possession or occupation is not void or illegal under Regulation I of 1959 as amended by Regulation I of 1970 or any other law for the time being in force. Therefore, it is clear that a non-tribal is not entitled for any patta under Section 7(1) of Regulation II of 1970, unless he satisfies that he is not claiming the lands covered under Regulation I of 1959 as amended by Regulation I of 1970 or are protected under any other tribal laws for the time being in force. Inasmuch as there is an order under Regulation I of 1959 as amended by Regulation I of 1970 of the primary authority i.e. Special Deputy collector, Tribal Welfare, Eluru, dated 27-6-1979 in favour of the petitioners, who are tribals, recognizing their rights in respect of the subject lands, which was confirmed by the appellate authority i.e. Agent to the Government, West Godavari, Eluru, by order dated 29-4-1983, and the respondent Nos. 4 to 7 having not challenged the same before any higher authority or Court, the orders having attained finality, therefore, the orders obtained by respondent Nos. 4 to 7 under Regulation II of 1970 behind the back of the petitioners, in respect of the said lands are illegal and void, for the orders passed by the primary authority under Regulation I of 1959 as amended by Regulation I of 1970, granting ryotwari patta in favour of the petitioners and confirmed by the appellate authority, were in force as they were not set aside by any higher authority or Court. Therefore, the contention of respondent Nos.4 to 7 that Regulation I of 1970 has no application to the subject lands being estate lands and the relevant Regulation applicable to them is Regulation II of 1970, cannot be sustained.

Further, this Court in **G. Nagabhushanamma v. Government of A.P.** (2nd supra), while considering the question as to whether Regulation I of 1959 as amended by Regulation I of 1970 has primacy over Regulation II of 1970, held thus:

“Amended 1959 Regulation contains an elaborate scheme of primary and appeal opportunities to ensure a proper determination of the validity or otherwise of a transfer which would run foul of the provisions of the said Regulation. This is a special enactment intended to protect the interest of the Tribal. The determination of the validity or otherwise of a transfer, under this

Regulation is conclusive of the issue and binds identical questions arising under any other Regulation whether earlier or later in point of time. Further the fact that Regulation 2/70 also requires the authorities thereunder to ensure that the grant of ryotwari patta would not be inconsistent with the Amended 1959 Regulation, would clearly indicate the legislative intent that Regulation 2/70 intends primacy to be accorded to the legislative philosophy underlying the various provisions of the Amended 1959 Regulation. On this interactive and purpose construction of the two Regulations, the applicable interpretive principles warrant that the non-obstante provision in Sec.15 of Regulation 2/70 ought not be construed to permit subversion of any determination made under Amended 1959 Regulation.”

Pursuant to the above ruling, the Government of Andhra Pradesh issued G.O. Ms.No.68 Social Welfare (LTR.1) Department, dated 09-07-2002 ordering that the provisions of Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959 as amended by Regulation I of 1970 shall have overriding effect over any other law for the time being in force in the Tribal areas in the State in respect of the land transfers, and any contrary determination under any other Regulation including Andhra Pradesh Scheduled Areas Settlement Regulation 2 of 1970 in the Agency Areas of the State, is null and void. Therefore, any proceeding initiated under Regulation II of 1970 contrary to Regulation I of 1959 as amended by Regulation I of 1970 is null and void. In that view of the matter, the orders obtained by respondent Nos.4 to 7 under Regulation II of 1970 without getting the earlier order, granted in favour of the petitioners under Regulation I of 1959 as amended by Regulation I of 1970 which was confirmed by the appellate authority and to which respondent Nos. 4 to 7 were parties, *set aside*, are null and void.

In the above view of the matter, the order passed under Regulation II of 1970 granting ryotwari patta in favour of one V. Durga Rao, son of respondent No.7 herein by the proceedings of the Settlement Officer, Eluru in SR No.415/75, dated 30-6-1984 in respect of 0-69 H.A. in R.S. No.459/2 and 3-46 H.A. in R.S. No.464, which was confirmed by respondent No.3 herein in AP No.197/84-02, dated 16-9-1997; the order of the Settlement Officer, Eluru under Regulation II of 1970 in proceedings SR No.12/94, dated 08-08-1997 granting ryotwari patta in favour of respondent No.5 in respect of 0-68 H.A. in R.S. No.460/2 and 0-76 H.A. in R.S. No.460/4; and the order of the third respondent in AP No.145/81 (G2), dated 29-11-1996 granting ryotwari patta as per the provisions of Regulation II of 1970 to respondent No.6 in respect of 3-60 H.A. in R.S. No.465, are hereby set aside. Accordingly, the writ petition is allowed with a direction to the respondents not to interfere with the possession and

enjoyment of the petitioners in respect of the subject lands. No costs.

N.V. RAMANA, J

Date: 11-04-2005

Svv

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Monday, the Eleventh day of April, Two thousand and Five.

..... ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

- 1 The District Collector, Eluru, West Godavari District.
- 2 The M.R.O. Officer, Buttayagudem Mandal, West Godavari District.
- 3 The Director Of Settlements, Government Of A.P., Hyderabad.
- 4 Two Ccs. to the Government Pleader for Revenue, High Court Buildings, A.P., Hyderabad (OUT).

5 Two CD copies

6 One CC to MR.RAM MOHAN REDDY

7 One CC to MR.BHUPAL

*Form-NIC-OGS/WP{**RAGHU**}*